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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE – INTERIM CHAIRMAN
BOB STUMP
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TOM FORESE

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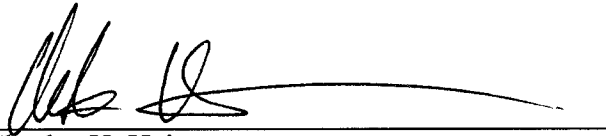
IN THE MATTER OF THE PROPOSED
AMENDMENTS OF THE PIPELINE SAFETY
RULES A.A.C. R14-5-202, R14-5-203, R14-5-204,
R14-5-205, AND R14-5-207.

DOCKET NO. RG-00000A-15-0098

**NOTICE OF FILING
STAFF RESPONSES TO COMMENTS**

Staff hereby provides notice of filing the attached Staff Responses to Comments in regards to the above captioned matter.

RESPECTFULLY SUBMITTED this 26th day of January, 2016.


Charles H. Hains
Attorney, Legal Division
Arizona Corporation Commission
1200 West Washington Street
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(602) 542-3402

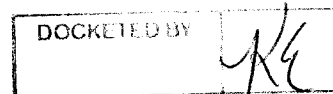
Original and thirteen (13) copies of the foregoing filed this 26th day of January, 2016, with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Arizona Corporation Commission

DOCKETED

JAN 26 2016



1 Copy of the foregoing mailed this
26th day of January, 2016, to:

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Roseann Osorio

**STAFF REPORT
SAFETY DIVISION, PIPELINE SAFETY SECTION
ARIZONA CORPORATION COMMISSION**

PROPOSED RULEMAKING ON PIPELINE SAFETY RULES

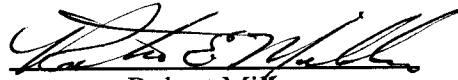
DOCKET NO. RG-00000A-15-0098

STAFF RESPONSE TO COMMENTS

January 26, 2016

STAFF ACKNOWLEDGEMENT

The Staff Response to Comments for Proposed Rulemaking on Pipeline Safety Rules, Docket No. RG-00000A-15-0098, was the responsibility of the Staff member listed below.

A handwritten signature in black ink, appearing to read 'Robert Miller', is positioned above the printed name.

Robert Miller
Pipeline Safety Manager

During the January 19, 2016 public comment hearing regarding the above captioned rulemaking proceeding, oral comments indicated further written comments were docketed. Staff has reviewed the written comments docketed on behalf of Spectrum LNG, the owner of Desert Gas, a liquefied natural gas facility located at Ehrenberg. The comments provided by Spectrum are the only written comments that have been provided with regard to the proposed rulemaking. Below, Staff repeats the comments of Spectrum and, in turn, provides its response to each comment.

- 1. The notices were mailed to our old office address. This is frustrating because I personally changed our mailing address with the Pipeline Safety office during the resolution of docket G-20923A-15-0030. I did this at the very beginning of the docket yet the NPRM was still sent to the old address. We were never given the opportunity to be heard on the matter.**

Staff Response:

The address on file with Staff for Desert Gas, LP was updated when Staff was made aware of the address correction. Likewise, the original notice of proposed rulemaking, the notice of emergency rulemaking and the notice of supplemental rulemaking were all published in the Arizona Administrative Register providing notice to the public. The comments of Desert Gas have been timely received in accordance with the deadline for written comments regarding the proposed supplemental rulemaking. Through the written comments it provided, Desert Gas has taken the opportunity to be heard in this matter.

- 2. This rule change only impacts two operators in the state, we have spoken with ALT who owns the Topock plant and they were as surprised as we are.**

Staff Response:

Staff is unaware of any comments or objections from Applied LNG Technologies ("ALT"). Staff acknowledges that there are only two Liquefied Natural Gas facilities operating within Arizona, and the two LNG facility operators are the only operators that would be impacted by a change to requirements for LNG facilities. Staff would note that ALT has been included on the service list proposed by Staff on April 27, 2015 in the original notice of proposed rulemaking, and has been included on the service list throughout the process in this docket thereafter.

Staff believes that the number of facility operators impacted by any rule change does not lessen the appropriateness of adopting a safety rule change. There is always the potential that more operators of facilities that would be governed by a particular rule change may begin operation within Arizona. Additionally, as explained below in response to (3) and (10), transmission pipeline operators already must comply with a similar requirement.

Staff acknowledges that the rule modification will have a cost impact to those LNG facility operators that are not already in compliance with the proposed requirements. The Commission ordered the revision of the economic impact statement from the original notice of proposed rulemaking to acknowledge the potential of increased testing costs to LNG facility operators. *See* Decision No. 75250 (August 26, 2015) at 13. The proposed economic impact statement acknowledges there will be an increased cost to such operators owing to increased non-

destructive testing. *See* Notice of Final Rulemaking filed September 16, 2015, attached Economic Impact Statement.

The extent of the increase is not estimable as there are multiple technologies available to non-destructively test applicable welds and they vary in relative expense. As the proposed rule modification does not dictate the testing methodology, Staff believes that the rule provides sufficient flexibility for LNG facility operators to utilize such non-destructive testing methods as are already permissible under the Code of Federal Regulations as it has been adopted by reference into the Arizona rules. Further, the proposed rule modification will only apply to new welds, not existing welds because the rule would only apply to welds for newly installed, replaced or repaired pipeline or appurtenances. Staff believes this will moderate any increased testing costs as it will only have an impact on a going-forward basis.

3. **We don't understand why the State of Arizona feels the need to modify Federal Code 49CFR193.2303 when the other 49 States accept it? We don't see the rationale for this change and wonder what safety or economic data was relied upon for this change? Without doubt the LNG industry is being singled out and to our knowledge there has been no pipe weld failure to even suggest this change is needed. This change, if implemented will give pause to other LNG investments that may be made in Arizona.**

Staff Response:

Staff believes that rules that reasonably enhance safety are appropriate. Staff would note that Arizona has a pipeline safety program that meets federal audit standards and maintains a very proactive regulatory oversight safety program. In Staff's experience, more typically, other states follow Arizona's example.

Staff is concerned that the operating stresses experienced during the process of liquefying natural gas warrants increased attention. The process of liquefying natural gas is cryogenic in nature and involves both increasing the pressure as well as decreasing the temperature of natural gas in order to change its operating temperature state of a vaporous gas into a liquid. The pressure involved is comparable to transmission pipe. Staff notes that new welds on transmission pipeline already requires 100 percent non-destructive testing. Consequently, the proposed requirement puts LNG facilities on equal footing with the testing requirements in place for facilities that operate under comparable pressures. Staff further notes that transmission pipe is not subject to comparable operating temperature stresses. Therefore, the proposed change in testing requirements remains modest in comparison to the testing requirements for new welds involving transmission pipe.

4. **We take issue with statements made at the hearing on June 18th that suggest this rule making was required only to maintain compliance with the Federal code and that if it wasn't passed, that funding would be at risk. The notion that funding would be at risk if the ACC didn't adopt the Federal code is false and deceptive. Should the enforcement department be allowed to write the rules? This is a public policy issue and should be treated as such.**

Staff Response:

Staff would refer to the transcript of the June 18, 2015 public comment hearing wherein Mr. Miller states on behalf of Staff,

“This rulemaking is *primarily* to adopt various updates to provisions of the Code of Federal Regulations that have been incorporated by reference. *Additionally*, there are some clarifications being made to the rules.”

Transcript of June 18, 2015 public comment hearing at page 4 (emphasis added). Staff noted that there were changes in addition to those that update incorporations by reference of the CFR that are necessary to maintain compliance with Arizona’s Federal Certification and Grant Program. In addition, the text of the rule, with the proposed changes properly identified, was published in the Arizona Administrative Register for all the public to see and in accordance with proper rulemaking procedure.

The Commission is required to update its rules periodically to maintain currency with the CFR in order to maintain a pipeline safety program that complies with the terms of Arizona’s Federal Certification with Department of Transportation’s Pipeline and Hazardous Materials Safety Administration. Pursuant to that relationship, the Commission must maintain rules that are consistent with federal requirements. As the federal regulations are continuously being updated, periodic updates to the Commission’s adoption of federal regulations are likewise necessary so as not to fall behind the current federal requirements.

Further, in accordance with the Federal Certification and Grant Program each state Pipeline Safety Program must adhere to the federal certification guidelines to assure full funding. Every year the Pipeline Safety Section is audited for compliance with federal guidelines. Failure on the part of Arizona’s pipeline program to adhere to these guidelines will result in decreased funding, as detailed in section 3.1 of the guidelines which states,

“Adoption of Federal Regulations and Requirements

A State agency participating in the pipeline safety program under a certification is required to adopt Federal pipeline safety regulations or take steps to adopt such regulations. Adoption of applicable Federal regulations may be automatic, require State rulemaking actions, or necessitate State legislative action, and should be adopted within 24 months of the effective date or two general sessions of the State Legislature, whichever is longer. In addition, a State agency may issue additional or more stringent standards concerning intrastate pipelines as long as they are compatible with Federal regulations. Any interpretation of a regulation adopted by a State agency must not conflict with any opinion/interpretation issued by PHMSA.”

Failure to follow the guidelines may lead to not only loss of funding but ultimately decertification of the state program.

Staff would point out that safety is a public policy concern. Treating the proposed rulemaking as a public policy issue does not change the analysis of the appropriateness of adopting the proposed rules.

- 5. This change impacts ongoing work we have in progress. On July 20th we submitted a package to the Pipeline Safety office advising of a modification to our plant. We**

took this proactive measure as part of the ACC approved settlement agreement docket G-201923A-15-0030 even through the agreement hadn't been formally approved by the ACC yet. This point is that on July 22nd Pipeline Safety replied with an email that approved our very thorough package for a compressor installation. Section 5.1.3 specifically states the X-ray strategy for the package which was approved and we have now completed the construction of this package. Installation is underway and we would like to avoid a conflict over the X-ray requirements for this ACC staff approved project. We have other projects in process as well that this rule will impact.

Staff Response:

Staff is familiar with the testing requirements that Desert Gas agreed to in settlement. At this time, the rule is in effect on an emergency basis and, if it is approved as proposed, would be applicable only to new welds performed after the effectiveness of the rule. The rule went into effect on an emergency basis on December 15, 2015.

Under the circumstances described by Desert Gas in its comments, certain facilities were assembled and welds were conducted in a timeframe prior to the effectiveness of the rule modification pursuant to an emergency. Those welds were performed in a manner consistent with the rule requirements applicable at that time. However, new welds performed after December 15, 2015 would be subject to the new requirements. This would apply to new welds performed to connect the assemblage to the existing facilities as well as any other new welds performed as part of the installation process. However, the existing welds that were performed in compliance with the then current rule requirements do not require further testing. Additionally, Staff would again note that the non-destructive testing of 100 percent of all welds for newly installed pipeline or appurtenances does not specifically require that the testing method be X-Rays.

6. **Item 3 in the now approved agreement specifically addresses future testing of welds. During the negotiations for the settlement, ACC Staff had argued for 100% testing on all future welds. The settlement includes 100% testing on ONLY the welds that were the cause of the complaint, NOT all future welds.**

Staff Response:

The settlement agreement that is referenced is attached to and adopted by Decision No. 75301 (October 27, 2015). At page 8 of the Settlement, the paragraph described as "Testing of Welds for New Compressor (MRC-6)" sets out the agreed to terms regarding testing of welds. As the paragraph explains, it is only applicable to welds performed specifically in connection with that specific methane compressor. As a general proposition, these kinds of settlement agreements only apply to the matter at hand and do not apply to future matters. As such, Staff believes that the Settlement reached in resolution of Staff's complaint against Desert Gas in Docket No. G-20923A-15-0030 applies only to the issues that prompted the complaint.

With regard to the Settlement's resolution of any future testing of welds, that term is specified on Page 9 of the Settlement under the paragraph described as "3. Future Testing of Welds". As that provision specifies, Desert Gas agreed that all future welds would meet the requirements of 49 C FR 193.2013(b)(C). The cited provision is the incorporation by reference of the ASME standards for quality of welds. Regarding the frequency of non-destructive testing, the ASME requirements

are only implicated in the event that detection of failed welds occurs. *See* ASME B31.3, Section 341.3.4. However, it does not speak to the frequency of non-destructively testing welds on a standard basis, in other words, under circumstances where there has not been the detection of a failed weld. This latter situation is provided for under the National Fire Protection Association code 59A Section 6.6.3.2. NFPA 59A is separately incorporated by reference into the CFR at 49 CFR 193.2013(c)(F). As the Settlement specifies a CFR code provision that does not relate to the frequency of non-destructive testing on a standard basis, Staff does not believe that the Settlement adopted by Decision No. 75301 speaks to the issue that the proposed rule change addresses.

- 7. This has a significant economic impact. I would like to know if the ACC has calculated the increase cost of future expansion for LNG plant owners and considered how this action will stymie growth.**

Staff Response:

As stated in response to (2) above, the cost impact of the rule change will vary. The costs associated with the non-destructive testing of welds made to jurisdictional piping can vary widely based upon the scope of the work, the number of welds being performed, and the method of testing. The proposed rule change does not specify the testing methodology and thus operators are free to select appropriate non-destructive testing methods that are already approved under the ASME as it has been incorporated by reference by the CFR and in turn adopted by reference into Arizona's rules.

Under the scenario described in (9) below, many of the welds are part of shop fabricated units shipped and installed as single components. The proposed rule only addresses those new welds performed on jurisdictional pipeline at the facility location, in other words, welds performed as part of the installation, repair or replacement of pipeline or appurtenances. Thus, the total number of welds to be tested is limited.

- 8. In general, rules, regulations, or statutes are created by one body and enforced by others. Was the source for this rule the same as the enforcement? Is there any check and balance in the process?**

Staff Response:

Staff does not agree with the proposition that entities that promulgate rules do not in turn enforce those rules. One of the defining characteristics of administrative agencies is that they combine aspects of legislative (i.e. the creation of new requirements) as well as executive (i.e. enforcement of jurisdictional requirements) and potentially judicial (if it likewise internally adjudicates enforcement) functions. The federal regulatory regime governing pipeline safety also combines rulemaking and enforcement in one entity.

With regard to the source of the rule, Staff is proposing the rule. The Commission is authorized to promulgate such rules for the enhancement of pipeline safety due to A.R.S. § 40-441 *et seq.* which delegated to the Commission responsibility for the regulation of all natural gas and hazardous liquids transportation and pipeline facility regulation for the State of Arizona. Pursuant to A.R.S. § 40-442, the Commission likewise has the authority to enforce compliance with rules the Commission has issued governing the regulation of natural gas and hazardous liquids transportation and pipeline facility safety.

The comment likewise poses a query as to the existence of checks and balances. Staff would note that the Commission must vote to adopt the proposed rule changes in a process that follows the provisions of the Administrative Procedure Act. Further, the Arizona Commission is an elected body. Finally, because the rules are not part of the Commission's exclusive ratemaking authority, the rules must be reviewed by the Attorney General to determine whether they are within the Commission's authority to regulate pipeline safety that was granted to the Commission by the Legislature.

- 9. Our plant integrates several skid-mounted packaged compressors and a few other pre-fabricated skids with pipe on them. These packages can be installed and removed and are always manufactured elsewhere. IS all of the on-skid piping subject to this rule? If so, this will preclude us from being able to use packaged compressors and systems without having them built according to the rule. The gas producing states have thousands of these units in operation and don't have the 100% rule. Did anyone think about this?**

Staff Response:

As stated in response to (7) above, the rule would apply only to those welds that are performed on site at the facility. Prefabricated assemblies would not be impacted by this rule. Nonetheless, it will remain the operator's responsibility to provide documentation to demonstrate that the prefabricated assemblies have been constructed and tested in accordance with other existing regulations and adopted standards.

- 10. I'm told the upshot to this is the elimination of a particular exception provided in NFPA 59A 6.6.3.2. I'm not challenging the expertise of the ACC, but I would like to understand why NFPA provided the exception and ACC thinks they erred in doing so, and the basis for ACC rules which exceed the Federal UDOT PHMSA code and the American National Standards Institute piping codes which are the industry standards throughout the industrialized world.**

Staff Response:

Staff believes the benefit of adopting the rule is that it improves safety. From a policy perspective, Staff believes that standards articulate a minimum or a floor for conduct. With regard to the issue of public safety, the driving force behind rule changes should not be to treat the floor as the ceiling on what constitutes reasonable or appropriate requirements. Rather, a safety improvement is appropriate if it can be reasonably anticipated to improve a safety concern.

With regard to the specific safety benefit of the proposed changes, the rule change improves safety for the reasons explained in response to (3) above. That is to say, the rule will require full non-destructive testing on all new welds for the installation, repair or replacement of LNG pipeline or appurtenances. The cryogenic liquefaction process used by an LNG facility exerts comparable pressure stress on pipe to that witnessed by pipe used for natural gas transmission. Natural gas transmission pipe (both intrastate and interstate) is already subject to the requirement of full 100 percent testing of all new welds for the installation, repair or replacement of pipeline facilities or appurtenances. LNG facilities also operate under high thermal stresses due to the cooling necessary to liquefy natural gas which is an added stress that natural gas transmission pipe is not subject to. Considering that LNG facility piping operates under comparable, if not

greater stress than transmission pipe and that the proposed change merely requires LNG facilities to perform comparable testing with transmission pipelines, Staff believes that the increased requirements are reasonable.